

relating to requirements of a relocation program for families displaced by a project, consideration of economic, social, and environmental interests, and prohibition against regulating the operation of a mass transportation system for which a grant is made under section 5309 and regulating any charge for the system after a grant is made.

§ 5325. Contract requirements

(a) **COMPETITION.**—Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

(b) **ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS.**—

(1) **PROCEDURES FOR AWARDING CONTRACT.**—A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

(2) **ADDITIONAL REQUIREMENTS.**—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

(A) **PERFORMANCE OF AUDITS.**—Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

(B) **INDIRECT COST RATES.**—A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizant Federal or State government agency, if such rates are not currently under dispute.

(C) **APPLICATION OF RATES.**—After a firm's indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

(D) **PRENOTIFICATION; CONFIDENTIALITY OF DATA.**—A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(c) **EFFICIENT PROCUREMENT.**—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award

furthering an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

(d) **DESIGN-BUILD PROJECTS.**—

(1) **TERM DEFINED.**—In this subsection, the term “design-build project”—

(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that meets specific performance criteria; and

(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

(2) **FINANCIAL ASSISTANCE FOR CAPITAL COSTS.**—Federal financial assistance under this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

(e) **MULTIYEAR ROLLING STOCK.**—

(1) **CONTRACTS.**—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multi-year contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) **COOPERATION AMONG RECIPIENTS.**—The Secretary shall allow at least two recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(f) **ACQUIRING ROLLING STOCK.**—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(g) **EXAMINATION OF RECORDS.**—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to and the right to examine and inspect all records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

(h) **GRANT PROHIBITION.**—A grant awarded under this chapter or the Federal Public Transportation Act of 2005 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

(i) **BUS DEALER REQUIREMENTS.**—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

(j) **AWARDS TO RESPONSIBLE CONTRACTORS.**—

(1) **IN GENERAL.**—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the

terms and conditions of a proposed procurement.

(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

(A) the integrity of the contractor;

(B) the contractor’s compliance with public policy;

(C) the contractor’s past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and

(D) the contractor’s financial and technical resources.

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 825; Pub. L. 104-287, §5(16), Oct. 11, 1996, 110 Stat. 3390; Pub. L. 105-178, title III, §3022, June 9, 1998, 112 Stat. 363; Pub. L. 105-206, title IX, §9009(n), July 22, 1998, 112 Stat. 857; Pub. L. 107-217, §3(n)(2), Aug. 21, 2002, 116 Stat. 1302; Pub. L. 109-59, title III, §3025(a), Aug. 10, 2005, 119 Stat. 1620; Pub. L. 110-244, title II, §201(k), June 6, 2008, 122 Stat. 1611.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
5325(a)	49 App.:1608(b)(1).	July 9, 1964, Pub. L. 88-365, §12(b)(1), 78 Stat. 306; Sept. 8, 1966, Pub. L. 89-562, §2(a)(1), 80 Stat. 715; May 25, 1967, Pub. L. 90-19, §20(a), 81 Stat. 25; Nov. 6, 1978, Pub. L. 95-599, §308(a)(1), 92 Stat. 2745.
5325(b)	49 App.:1608(b)(2).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(2); added Nov. 6, 1978, Pub. L. 95-599, §308(a)(2), 92 Stat. 2745; restated Jan. 6, 1983, Pub. L. 97-424, §308, 96 Stat. 2151.
5325(c)	49 App.:1608(b)(3).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(3); added Apr. 2, 1987, Pub. L. 100-17, §315(a), 101 Stat. 232.
5325(d)	49 App.:1608(b)(4).	July 9, 1964, Pub. L. 88-365, 78 Stat. 302, §12(b)(4); added Apr. 2, 1987, Pub. L. 100-17, §316, 101 Stat. 232.

In subsection (a), the words “reconstruction”, “in furtherance of the purposes”, “by applicants”, “procedures as defined by the Secretary”, “of the contracting parties”, and “the operations or activities under” are omitted as surplus. The words “shall be made available to” are substituted for “shall . . . have access to”, and the words “an officer or employee of the Secretary or Comptroller General” are substituted for “any of their duly authorized representatives”, for consistency in the revised title and with other titles of the United States Code.

Subsection (b) is substituted for 49 App.:1608(b)(2) for clarity. The text of 49 App.:1608(b)(2) (last sentence) is omitted as executed.

PUB. L. 104-287

This amends the catchline for 49:5325(d) to make a clarifying amendment.

REFERENCES IN TEXT

The Federal Public Transportation Act of 2005, referred to in subsec. (h), is title III of Pub. L. 109-59, Aug. 10, 2005, 119 Stat. 1544. For complete classification of this Act to the Code, see Short Title of 2005 Amendment note set out under section 5101 of this title and Tables.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110-244, §201(k)(1), inserted “adopted before August 10, 2005” before period at end.

Subsec. (b)(2), (3). Pub. L. 110-244, §201(k)(2), (3), redesignated par. (3) as (2) and struck out former par. (2). Text read as follows: “Paragraph (1) does not apply to the extent a State has adopted by law, before the date of enactment of the Federal Public Transportation Act of 2005, an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services.”

2005—Pub. L. 109-59 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to noncompetitive bidding in subsec. (a), procedures for award of architectural, engineering, and design contracts in subsec. (b), and efficient procurement in subsec. (c).

2002—Subsec. (b). Pub. L. 107-217 substituted “chapter 11 of title 40” for “title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)”.

1998—Subsec. (b). Pub. L. 105-178, §3022(b), as added by Pub. L. 105-206, inserted “or requirement” after “A contract” and “When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23, United States Code.” before “This subsection does not apply”.

Pub. L. 105-178, §3022(a)(1), (2), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

“(1) based on—

“(A) initial capital costs; or

“(B) performance, standardization, life cycle costs, and other factors; or

“(2) with a party selected through a competitive procurement process.”

Subsec. (c). Pub. L. 105-178, §3022(a)(1), (3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “A recipient of a grant under section 5307 of this title procuring an associated capital maintenance item under section 5307(b) may make a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

“(1) the manufacturer or supplier is the only source for the item; and

“(2) the price of the item is no more than the price similar customers pay for the item.”

Subsec. (d). Pub. L. 105-178, §3022(a)(2), redesignated subsec. (d) as (b).

1996—Subsec. (d). Pub. L. 104-287 substituted “ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS” for “MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS” in heading.

EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105-206 effective simultaneously with enactment of Pub. L. 105-178 and to be treated as included in Pub. L. 105-178 at time of enactment, and provisions of Pub. L. 105-178, as in effect on day before July 22, 1998, that are amended by title IX of Pub. L. 105-206 to be treated as not enacted, see section 9016 of Pub. L. 105-206, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-287 effective July 5, 1994, see section 8(1) of Pub. L. 104-287, set out as a note under section 5303 of this title.

[§ 5326. Repealed. Pub. L. 109-59, title III, § 3025(b), Aug. 10, 2005, 119 Stat. 1622]

Section, Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 826; Pub. L. 103-429, §6(11), Oct. 31, 1994, 108 Stat. 4379; Pub. L. 105-178, title III, §3023(a), (b), June 9, 1998, 112 Stat. 364, related to turnkey system projects, acquisition of rolling stock, and procurement of associated capital maintenance items.

§ 5327. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and record-keeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month; and

(13) safety and security management.

(b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) LIMITATIONS.—

(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Of the amounts made available to

carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts to make contracts for the activities described in paragraph (2):

(A) 0.5 percent of amounts made available to carry out section 5305.

(B) 0.75 percent of amounts made available to carry out section 5307.

(C) 1 percent of amounts made available to carry out section 5309.

(D) 0.5 percent of amounts made available to carry out section 5310.

(E) 0.5 percent of amounts made available to carry out section 5311.

(F) 0.5 percent of amounts made available to carry out section 5320.

(2) ACTIVITIES.—Paragraph (1) shall apply to the following:

(A) Activities to oversee the construction of a major project.

(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or subrecipient of funds under sections 5305, 5307, 5309, 5310, 5311, and 5320.

(C) Activities to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

(3) LIMITATIONS ON APPLICABILITY.—Subsections (a), (b), and (e) do not apply to contracts under this section for activities described in paragraphs (2)(B) and (2)(C).

(4) GOVERNMENT'S SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

(5) AVAILABILITY OF CERTAIN FUNDS.—Beginning in fiscal year 2006, funds available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement or project construction grant agreement.

(d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91-143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96-184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of "major capital project" for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

(f) FINANCIAL PLAN.—A recipient of financial assistance for a project under this chapter with